

rents determined under the Restructuring Plan in accordance with §§ 401.410 or 401.411.

§ 401.606 Tenant-based assistance provisions.

If the Restructuring Plan provides for tenant-based assistance, each assisted family residing in a project-based assisted unit when the project-based assistance terminates must be offered tenant-based assistance under part 982. The rent levels provided in 515(c)(4) of MAHRA will apply except for families already receiving tenant-based assistance when the project-based assistance terminates.

§ 401.607 Contract term.

The term of the initial and subsequent contract renewals under this part, whether for project-based or tenant-based assistance, will be determined by the appropriate HUD official.

Subpart F—Owner Dispute of Rejection and Administrative Appeal

§ 401.645 How does the owner dispute a notice of rejection?

(a) *Notice of rejection.* HUD will notify the owner of the reasons for a rejection under §§ 401.101, 401.402, 401.403, 401.405 or 401.451. An owner will have 30 days from receipt of this notice to provide written objections or to cure the underlying basis for the objections. If the owner does not submit written objections or cure the underlying basis for the objections during that period, the decision will become a final determination under section 516(c) of MAHRA and is not subject to judicial review.

(b) *Final decision after objection; right to administrative review.* If an owner submits written objections or asserts that the underlying basis for the objections is cured, after consideration of the matter HUD will send the owner a final decision affirming, modifying, or reversing the rejection and setting forth the rationale for the final decision.

§ 401.650 When may the owner make an administrative appeal of a final decision under this subpart?

The owner has a right to make an administrative appeal of the following:

- (a) A final decision by HUD under § 401.645(b) (including a final decision under § 402.7 of this chapter);
- (b) A decision by HUD and the PAE to offer a proposed Restructuring Commitment that the owner does not execute; and
- (c) A decision by HUD to accelerate the second mortgage under § 401.461.

§ 401.651 Appeal procedures.

(a) *How to appeal.* An owner may submit a written appeal to HUD, within 10 days of receipt of written notice of the decision, con-

testing the decision and requesting a conference with HUD. At the conference, the owner may submit, in person, in writing, or through a representative, its reasons for appealing the decision. The HUD or PAE official who issued the decision under appeal may participate in the conference and submit in person, in writing, or through a representative, the basis for the decision.

(b) *Written decision.* Within 20 business days after the conference, or 20 business days after any agreed upon extension of time for submission of additional materials by or on behalf of the owner, HUD will advise the owner in writing of the decision to terminate, modify, or affirm the original decision.

(c) *Who is responsible for reviewing appeal?* HUD will designate an official to review any appeal, conduct the conference and issue the written decision. The official designated must be one who was neither involved in, nor reports to another involved in, making the decision being appealed.

§ 401.652 No judicial review.

The reviewing official's decision under § 401.651 is a final determination for purposes of section 516(c) of MAHRA and is not subject to judicial review.

PART 402—PROJECT-BASED SECTION 8 CONTRACT RENEWAL WITHOUT RESTRUCTURING (UNDER SECTION 524(a) OF MAHRA)

Sec.

- 402.1 What is the purpose of part 402?
- 402.2 Definitions.
- 402.3 Contract provisions.
- 402.4 Contract renewals under section 524(a)(1) of MAHRA.
- 402.5 Contract renewals under section 524(a)(2) of MAHRA.
- 402.6 What actions must an owner take to request section 8 contract renewal under this part?
- 402.7 Refusal to consider an owner's request for a section 8 contract renewal because of actions or omissions of owner or affiliate.
- 402.8 Tenant protections if an expiring contract is not renewed.

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 63 FR 48953, Sept. 11, 1998, unless otherwise noted.

§ 402.1 What is the purpose of part 402?

This part sets out the terms and conditions under which HUD will renew project-based section 8 contracts under the authority provided in section

§ 402.2

524(a)(1) or (2) of MAHRA. This part permits renewal notwithstanding part 24 of this title, but subject to section 516 of MAHRA (see § 402.7).

[65 FR 15498, Mar. 22, 2000]

EFFECTIVE DATE NOTE: At 65 FR 15498, Mar. 22, 2000, § 402.1 was revised, effective April 21, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 402.1 What is the purpose of part 402?

This part sets out the terms and conditions under which HUD will renew project-based section 8 contracts under the authority provided in section 524(a)(1) or (2) of MAHRA. Renewal will also be in accordance with § 401.601 of this chapter for eligible projects without a HUD-approved Restructuring Plan under part 401 of this chapter. This part permits renewal notwithstanding part 24 of this title, but subject to section 516 of MAHRA (see § 402.7).

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998]

§ 402.2 Definitions.

The definitions in § 401.2 of this chapter apply to this part.

§ 402.3 Contract provisions.

The provisions of chapter VIII of this title will apply only to the extent, if any, provided in the contract. Part 983 of this title will not apply.

§ 402.4 Contract renewals under section 524(a)(1) of MAHRA.

(a) *Initial renewal.* (1) HUD may renew any expiring section 8 project-based assistance contract at initial rents that do not exceed comparable market rents.

(2)(i) If HUD or a Participating Administrative Entity (PAE) determines that renewal of an expiring contract under this section for an eligible project would be sufficient to maintain both adequate debt service coverage on the HUD-insured or HUD-held mortgage and necessary replacement reserves to ensure the long-term physical integrity of the project, taking into account any comments received under § 401.502(c) of this chapter, HUD will renew the contract under this section without developing a Restructuring Plan, subject to § 402.7.

(ii) If HUD or the PAE determines that paragraph (a)(2)(i) of this section does not apply for an eligible project,

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HUD or the PAE may require a Restructuring Plan before the owner's request for renewal of an expiring section 8 contract will be given further consideration. If HUD or the PAE determines that the project's continued operation without a Restructuring Plan is not feasible and the owner does not cooperate in the development of an acceptable Restructuring Plan, HUD will pursue whatever administrative actions it considers necessary.

(b) [Reserved]

[65 FR 15498, Mar. 22, 2000]

EFFECTIVE DATE NOTE: At 65 FR 15498, Mar. 22, 2000, § 402.4 was revised, effective April 21, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 402.4 Contract renewals under section 524(a)(1) of MAHRA.

HUD may renew any expiring section 8 project-based assistance contract at initial rents that do not exceed comparable market rents. If the project is eligible for a Restructuring Plan under part 401 of this chapter, the owner's request for a renewal will be processed under § 401.601 of this chapter to determine whether a Restructuring Plan is needed. After comparable market rents have been initially established, any future rent adjustments will be determined by using an OCAF as provided in § 401.412 of this chapter, except that rents may be re-determined using a budget-based rent adjustment from time-to-time at the discretion of HUD. OCAF and budget-based adjustments may be positive or negative. The term of the initial and subsequent contract renewals under this section will be determined by the appropriate HUD official.

§ 402.5 Contract renewals under section 524(a)(2) of MAHRA.

(a) *Renewal for exception project at owner's request.* HUD will renew project-based assistance under this section instead of § 402.4 if requested by the owner of a project described in paragraph (b) of this section. The term of the initial and subsequent contract renewals under this section will be determined by the appropriate HUD official.

(b) *Exception projects included.* This section applies to:

(1) A project described in section 524(a)(2)(A) through (D) of MAHRA; and

(2) A project described in section 524(a)(2)(E) of MAHRA.

(c) *Initial rent levels for exception projects.* If the owner of such a project